

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION, ET AL.,

Debtors.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

December 17, 2008

10:09 a.m.

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

1 DEBTORS' Thirty-Second Omnibus Objection

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3 MOTION for an Order Solely as to Statutory Committees Extending  
4 Debtors' Exclusive Periods Within Which to File and Solicit  
5 Acceptances of Reorganization Plan

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7 EXHAUST Business Sale Motion

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24 Transcribed By: Esther Accardi

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P R O C E E D I N G S

THE COURT: Be seated. Okay. Delphi Corporation.

MR. BUTLER: Your Honor, good morning. Jack Butler and Kayalyn Marafioti on behalf of Delphi Corporation for our thirty-eighth omnibus hearing. This is the December omni.

There are three matters on the agenda, two of which are uncontested and the third contested matter we're only going to present the uncontested portion of it today.

THE COURT: Okay.

MR. BUTLER: The first matter on the agenda is the Exhaust Business sale motion at docket number 14443. This is for the sale, Your Honor. This is the second step of a sale process we've had to seek approval of the sale of the debtors' exhaust business to BN Turgeon SA (ph.) and certain of its affiliates, which were the stalking horse bidder.

Your Honor approved the bidding procedures on November 25th at docket number 14490. The bid deadline was 11 a.m. eastern time on December 8, 2008. And the selling debtor entities did not receive any bids by that time, so there was no auction that was held.

Your Honor, this particular transaction pursuant to the purchase and sale agreement, dated November 10, 2008, involves an allocation of the purchase price. Seventeen million of which is allocated to non-debtor entities. And 150,000 dollars which is allocated to selling debtor entities.

1           There have been no objections filed to the motion.  
2           The creditors' committee had previously filed a reservation of  
3           rights. We've reviewed the transaction with the committee's  
4           legal and financial advisors, and the committee is not  
5           contesting the sale today.

6           THE COURT: Okay. And the allocation was reviewed  
7           with the committee, too?

8           MR. BUTLER: Yes, Your Honor. The entire transaction  
9           I think has been reviewed.

10           We had fifteen exhibits that have been submitted to  
11           the Court in connection with this hearing, including Exhibit 1,  
12           which is the declaration of Keith Stipp, the company's director  
13           of restructuring, who is present in the courtroom today. And  
14           the balance of the exhibits include the agreements, the various  
15           court filings and proofs and service, and other matters  
16           relating to the transaction. And I would point out that  
17           Exhibits 14 and 15 are documents prepared by Lincoln  
18           International Advisors, which are the debtors' financial  
19           advisors for this particular transaction, which describe the  
20           sale process and their assessment of the value of the exhaust  
21           business, which are part of the documents and the bases for Mr.  
22           Stipp's declaration.

23           Your Honor, I'd move to admit Exhibits 1 through 15.

24           THE COURT: Okay. Any objection to their admission?

25           All right, they're admitted.

1 (Debtor's Exhibit 1 through 15 were hereby received in  
2 evidence, as of this date.)

3 MR. BUTLER: Your Honor, a couple of things I'd like  
4 to point out even though this is not contested because I simply  
5 want to make sure that the record is clear on this.

6 First, let me address the allocation. As I  
7 indicated, there was an allocation of the purchase price, both  
8 among non-debtor affiliates and with respect to the selling  
9 debtor entities. The portion of the acquired assets being sold  
10 by the selling debtor entities is comprised of intellectual  
11 property, including patents and trademarks and certain  
12 engineering resources, including equipment used by engineers to  
13 develop and test products. And Mr. Stipp describes in his  
14 declaration the basis upon which the debtors negotiated, and  
15 Delphi negotiated that allocation.

16 Second thing I wanted to point out to Your Honor so  
17 that the record is clear here, is that one of the items being  
18 sold here, one of the aspects of the items included in the  
19 transaction is the debtors -- excuse me, the sale by the  
20 sellers of forty percent of a non-debtor affiliate, Delphi  
21 Contra Ladura SA DCV (ph.), it's called DCSA in the motion.  
22 And this is owned already sixty percent by the buyer and forty  
23 percent -- the non-debtor affiliate owns forty percent of this  
24 joint venture. And the non-debtor affiliate is selling that  
25 joint venture to the buyer as part of this.

1           Because of that transaction and because the  
2 purchasers have sixty percent interest in a joint venture of a  
3 non-debtor affiliate, the question could be raised as to  
4 whether or not this is an insider transaction. I simply want  
5 that to be on the record and describe to you what that  
6 transaction is.

7           There is a Mexican joint venture that the seller --  
8 as I said, the purchasers own sixty percent of, it is -- the  
9 forty percent is owned by a non-debtor affiliate which I've  
10 just describe to you. And that works its way up eventually to  
11 DASHE (ph.), which is a debtor in these cases. And while I --  
12 I don't believe that this sale necessarily qualifies as an  
13 insider transaction. If Your Honor concluded that it did, it's  
14 still the debtor's view that this transaction satisfies the  
15 heightened scrutiny standard. It will be applied in such  
16 situations when you would sell assets to insiders pursuant to  
17 Section 363 of the Bankruptcy Code. I point to Mr. Stipp's  
18 declaration and I point to Exhibits 14 and 15 that have been  
19 admitted into evidence by the debtors' financial advisors about  
20 the activities taken to market this transaction. And the other  
21 particularized circumstances of the transaction. But I did  
22 want to make that presentation specifically on the record.

23           In addition, Your Honor, I should point out that  
24 Exhibit F to the motion sets forth the contracts that we're  
25 seeking to assume and assign in connection with the U.S. to the

1 buyer. We served the buyer assumption and assignment notices  
2 on November 25, 2008. There have been no objections to the  
3 buyer notices of assumption or assignment that have been  
4 presented to the debtors. So we have no objections on that  
5 piece either.

6 I don't know if Your Honor has any other questions  
7 about the transaction, but I wanted to -- other than making no  
8 specific notes on the record, I would otherwise rely on the  
9 pleadings and the evidentiary record that's been admitted.

10 THE COURT: Okay. I don't have any questions. Mr.  
11 Stipp's declaration sets forth the business rationale for the  
12 transaction as well as the allocation. I don't view it as an  
13 insider transaction given the arms length of the negotiations  
14 and the arms length relationship between the sellers and the  
15 buyer. Moreover, there's clearly a several months long sale  
16 process that gave any third party wishing to buy some or all  
17 the assets more than adequate time to put in a bid and do the  
18 due diligence and then make a final bid.

19 So I am prepared to approve the transaction as well  
20 as the sale free and clear given that there were no objections  
21 by anyone claiming an interest in the assets as well as the  
22 assumption and assignment of the contracts, again, in light of  
23 their being no objection after due notice of the assignment and  
24 cure notice.

25 MR. BUTLER: Thank you, Your Honor.



1 THE COURT: I have a form of order. I had a couple  
2 of minor -- very minor changes to it. But I'll need the three  
3 exhibits. Hopefully the disk that you have includes the three  
4 exhibits.

5 MR. BUTLER: We'll submit it after the hearing, Your  
6 Honor.

7 THE COURT: Okay.

8 MR. BUTLER: Your Honor, the second matter on the  
9 agenda is the third Section 1121(d) statutory committee  
10 exclusivity extension motion at docket number 14556. No party  
11 has filed an objection to this motion. Both committees have  
12 indicated to the debtors that they do not oppose the relief.

13 This order, Your Honor, if granted by the Court,  
14 would extend the existing deadlines of January 31, 2009 and  
15 March 31, 2009 to file any plan modifications or alternative  
16 plan. I am seeking substances in respect of such matters to  
17 March 31 and May 31 of 2009. Intention of this motion is,  
18 among other matters, to align this schedule to the milestones  
19 that are set forth in the accommodation agreement that Your  
20 Honor previously approved and which has been implemented.

21 I should also point out to the Court that the plan  
22 modification motion filed on October 3rd, which was scheduled  
23 for hearing today, was previously adjourned to the March 2009  
24 omnibus hearing. Again, for the same purpose, to align the  
25 schedule so that we can move forward with the process

1 contemplated under the accommodation agreement, and the  
2 anticipated filing of further plan modifications on or about  
3 February 27th of next year.

4 THE COURT: Okay. Does anyone have anything to say  
5 on this motion. All right. I'll approve the motion as the  
6 motion reminded everyone, the exclusive period issue is  
7 preserved pursuant to an earlier order entered in April as to  
8 the two committees. And the extension is clearly in line with  
9 the accommodation agreement as well as what we all hear is  
10 going on with GM and other major customers of the debtor. So  
11 clearly there's cause to extend the period as far as the  
12 committee's right to seek to break exclusivity.

13 MR. BUTLER: Thank you, Your Honor.

14 THE COURT: I'll enter that order.

15 MR. BUTLER: Thank you, Your Honor.

16 Your Honor, the last matter on the agenda matter  
17 number 3 is the thirty-second omnibus claims objection at  
18 docket number 14442. I am going to make a bit of a  
19 presentation on this particular claims objection because it's  
20 slightly different than what we've done in the past, and it's  
21 intended to expedite and bring further economy to the claims  
22 administration process.

23 In the prior thirty-one claims objections, the debtor  
24 sought to disallow or modify claims under the claims procedures  
25 authorized by the Court. A claimant could file a response that

1 didn't agree with that treatment. And the hearing on a  
2 particularized claim would be adjourned to a future hearing  
3 date. As Your Honor knows, more often than not we would  
4 continue working with the claimant and resolve those claims in  
5 connection with and, frankly, in order to avoid a contested  
6 hearing.

7 In this particular claims objection, in addition to  
8 certain other claims, we have chosen to address 170 claims that  
9 were previously objected to and resolved. While we're waiting  
10 execution of settlement agreements and joint stipulations to  
11 provide for their allowance, that is an expensive and time  
12 consuming process at this point in the case. Particularly,  
13 with all the circumstances of this case. And the debtors  
14 concluded that it would make sense rather than going into the  
15 process of entering separate settlement agreements and  
16 stipulations, that we would, in fact, devote our resources on a  
17 matter that would seek entry of an omnibus order that would  
18 allow each of the claims in their respective amount as agreed  
19 between the debtors and the claimant. And that's the primary  
20 purpose of this claims objection.

21 What we are seeking is entry of an order allowing  
22 certain claims, where the debtors and claimants have agreed  
23 upon the amount debtor and classification. We're also seeking  
24 that certain other claims disallowed, where the debtors and  
25 claimants agreed for one reason or another that the claim had

1 been fully satisfied and should be disallowed and expunged.  
2 Therefore, we're addressing 176 claims totaling 119.1 million  
3 dollars in stated amounts plus additional unliquidated amounts.

4 As of December 10th we received nine timely filed  
5 docketed responses covering 16.14 million dollars. We filed  
6 the usual omnibus reply yesterday with a chart detailing all  
7 that information.

8 In addition to those nine responses covering those  
9 nine proofs of claims, we are also, Your Honor, withdrawing the  
10 claims objection with respect to eight claims. Let me briefly  
11 address those. Five of those proofs of claim involved -- and  
12 these are claims number -- I'll just read the claim numbers.  
13 2680, 11248, 11249, 11251 and 11462 involve claims in which the  
14 debtors and claimants executed joint stipulations with respect  
15 to those claims after the filing of the thirty-second claims  
16 objection. And, therefore, we no longer need the relief  
17 either.

18 But one proof of claim, which is claim number 416,  
19 the debtors and claimants presently disagree as to the proper  
20 debtor entity and, therefore, we're withdrawing that objection,  
21 we'll deal with that separately.

22 With respect to claim number 2246, the debtors have  
23 decided to withdraw that objection because counsel involving  
24 the claimant requested the allowed amount of the claim, the  
25 adjusted reflected cure payments involving the sale of the

1 debtors' steering business. Those cure payments haven't been  
2 made, and therefore -- because we haven't closed that sale yet.  
3 Therefore, we've withdrawn that objection and that will go off  
4 on a different track.

5 And, finally, claim number 6991. We've agreed to  
6 enter into a separate stipulation involving expungement of that  
7 claim and not use this particular vehicle to do that.  
8 Therefore, Your Honor, we're seeking in this hearing to address  
9 a 159 claims involving 90.54 million dollars. Of those 159  
10 claims, fifty proofs of claims in the aggregate amount of  
11 15,712,375 dollars will be allowed in various asserted amounts  
12 because the variance between the debtors' books and records and  
13 the asserted amount of those claims, is in the debtors'  
14 judgment, de minimis.

15 With respect to ninety-one claims involving 72.29  
16 million dollars, we're asking the Court to adjust those  
17 downward to 65.39 million. With respect to six duplicate or  
18 amended claims, we're asking the Court to disallow and expunge  
19 those claims. And with respect to twelve claims, we're asking  
20 the Court based on a settlement with the claimants to expunge  
21 those claims.

22 Two other comments, Your Honor, that occurred in the  
23 last day or so. First, we have a revised -- the order that was  
24 submitted yesterday has certain provisions in it. We have  
25 revised the allowed amounts for four proofs of claims. But we

1 determined after filing the objection that the amount reflected  
2 on the exhibit needed to be revised. These involved claims  
3 numbers 15423, 11191, 14161 and claim number 11968.

4 Your Honor, we also had a discussion with counsel for  
5 Contrarian Funds LLC which led to a proposed revision of  
6 paragraph 5 of the proposed order. And this is an inquiry from  
7 Contrarian having to do with the allowance of claims and the  
8 impact of those claims on the reclamation demand. We agreed to  
9 add language to paragraph 5 that makes it clear that the  
10 allowance of the claims impacted by the reclamation demand does  
11 not otherwise prejudice the claimant's right to seek priority  
12 administrative status. With respect to the portion of the  
13 allowed claims subject to the reclamation demand. And the  
14 order also clearly reserves the debtors' rights to assert  
15 certain reserve defenses to that priority treatment, in  
16 particular the prior lien defense.

17 THE COURT: Otherwise the release language is in  
18 there?

19 MR. BUTLER: Correct, Your Honor.

20 THE COURT: Okay.

21 MR. BUTLER: So, Your Honor, those are the items I  
22 wanted to address. As we have done in the past claims matters  
23 I've provided a particularized notice in the form and manner  
24 that Your Honor requires in these circumstances.

25 THE COURT: And the changes in the allowed numbers in

1 the four claims, those are in favor of the claimants, or the  
2 claimants have agreed to it?

3 MR. BUTLER: Yes, Your Honor.

4 THE COURT: Okay. All right. I will approve the  
5 objections as modified. It's a good idea to put the consensual  
6 ones in here. Maybe in the future you can tell people if they  
7 don't want to just turn around the stip that you give them,  
8 filling in the numbers that will show up in the motion.

9 MR. BUTLER: Thank you, Your Honor.

10 THE COURT: In the future.

11 MR. BUTLER: Thanks very much.

12 THE COURT: So you have that order, too?

13 MR. BUTLER: We do, Your Honor.

14 THE COURT: Okay, great. Thank you.

15 MR. BUTLER: Your Honor, that concludes the matters  
16 on the agenda for today's hearing.

17 THE COURT: Okay.

18 (Proceedings concluded at 10:26 a.m.)  
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I N D E X

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RULINGS

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C E R T I F I C A T I O N

I, Esther Accardi, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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ESTHER ACCARDI

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Date: December 19, 2008